

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

IN RE: CARL JOSEPH MARASCALCO

CASE NO: 19-13759
CHAPTER 7

LINDA DELOACH

MOVANT

VS.

CARL JOSEPH MARASCALCO, SUSAN
DELOACH, and WILLIAM L. FAVA, CHAPTER
7 TRUSTEE

RESPONDENTS

MOTION TO SET ASIDE PRIOR ORDERS REGARDING CERTAIN PROPERTY

COMES NOW Linda Deloach, Movant herein, by and through her Attorney in Fact, Garner Jo Deloach Myers, and their counsel of record, Edward D. Lancaster, and files this Motion to Set Aside Prior Orders Regarding Certain Property and in support thereof would show as follows, to wit:

1. That this motion is brought before this Court pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure and Rule 60 of the Federal Rules of Civil Procedure. That Linda Deloach is a party in interest in this cause as a result of a dispute of certain alleged property of the Debtor, Carl Joseph Marascalco and/or Susan Deloach or even possibly the Estate of Elizabeth Deloach , Deceased, or Deloach Real Estate, LLC.

2. The parties in interest as far as the Movant at this time has knowledge after investigation, are as follows:

a. Linda Deloach, Movant, who is an adult resident of Grenada County, Mississippi, and is presently in a state of health know as “dementia”. Linda Deloach has previously appointed her daughter, Garner Jo Deloach Myers, also of Grenada County, Mississippi, as her attorney in fact pursuant to a Durable Power of Attorney executed on May 7, 1999, and of record in the official records of the Chancery Clerk of Grenada County, Mississippi, as Instrument No. 2022-803-806, a true and correct copy of which is attached hereto and made a part hereof as Exhibit “A”.

b. Carl Joseph Marascalco is the Debtor in this cause and is named as a respondent

to this motion. He has had a conservator appointed pursuant to Order of the Grenada County Chancery Court within the proceeding entitled *In The Matter of Conservatorship of Carl Marascalco*, Civil Action No. 18-CV-226, Chancery Court of Grenada County, Mississippi. The present appointed and acting Conservator is Jennifer Marascalco Russell, who is represented within the Chancery Court proceeding by Hon. E. Clark Trout of Oxford, Mississippi. The Ward herein, Carl Joseph Marascalco is represented in this proceeding by C. Gaines Baker, Attorney at Law.

c. William L. Fava, Chapter 7 Trustee within this cause acting on behalf of the United States Trustee for the Bankruptcy Court of the Northern District of Mississippi, representing the interests of the bankruptcy estate.

d. And, there is a previously unknown party in interest having just been discovered and identified by Movant's counsel as West Oxford Properties, LLC, a Mississippi entity of record with the Mississippi Secretary of State, Wil Matthews, Manager, and Matt McKenzie at 829 N. Lamar Blvd., Suite 1, Oxford, Mississippi 38655, registered as its agent for service of process. (See Exhibit "B" herein)

2. This saga began apparently in 2016 when the Debtor herein, Carl Joseph Marascalco, and Susan Deloach Marascalco began a divorce proceeding in Grenada County, Mississippi, which resulted in a divorce and division of the marital assets pursuant to a Property Settlement Agreement between the parties and made a part of the Final Judgment of Divorce.

3. At some time during this saga, there was a dispute as to ownership of a certain structure which was built and located on the property of Elizabeth Ann DeLoach, later deeded to Deloach Real Estate, LLC. However, at some point in time prior to the bankruptcy proceeding of Carl Joseph Marascalco, the structure (hereafter referred to as "the cabin") was relocated onto real property owned by Linda Deloach. The Cabin was made a permanent structure of that real estate and was not a mobile home or any type of temporary structure upon that land. A lawsuit was filed in the style of *Deloach Real Estate, LLC, and Elizabeth Ann Deloach vs. Carl Joseph Marascalco, Larry Deloach, Rodney Deloach and Linda Deloach*, Civil Action No. 2017-042 CVM, in the Circuit Court of Grenada County, Mississippi. Apparently the Plaintiffs in that case alleged that the Cabin

was wrongfully moved and converted to the use and possession of Carl Joseph Marascalco, Debtor herein, in its new location upon the land of Linda Deloach. No Final Judgment was ever entered by the Circuit Court of Grenada County, Mississippi. A Suggestion of Bankruptcy was filed in the Circuit Court case and no further action was taken by the Circuit Court in that cause other than transferring all matters to the United States Bankruptcy Court of the Northern District of Mississippi.

4. Debtor filed his Schedules within this bankruptcy cause wherein he stated ownership of the Cabin and estimated a value of approximately \$226,000.00 when he in fact had no title, right or interest in or too the Cabin. As a permanent structure affixed to the real estate upon which it is situated, the Cabin is a part and parcel of the real estate owned by Linda Deloach . The real property of Elizabeth Deloach and/or Deloach Real Estate, LLC was sold during this saga to West Oxford Properties, LLC, with no objection to the lack of the Cabin being situated upon the real estate. It is the information and belief of Movant by and through her Attorney in Fact that said West Oxford Properties, LLC, makes no claim whatsoever to the Cabin.

5. Linda Deloach has never been properly noticed in any manner by service of process in these proceedings, except for the Circuit Court of Grenada County, Mississippi. She or her Attorney in Fact has never received any proper notice or summons from the United Bankruptcy Court of the Northern District of Mississippi pursuant to Rule 7004 of the Federal Bankruptcy Rules of Procedure. It appears that simply on the statement of the Debtor in his Schedules, this Court has traveled upon the assumption that the Cabin is the property of the Debtor solely. It does not appear that any proper adjudication has been reached by this Court as to the actual ownership of the Cabin.

6. In fact, Trustee Favar filed a Motion to Compell Turnover against the said Linda Deloach without her being named as a party in interest or defendant in any proceeding in this Court and obtained an Order against her compelling her to allow access to the Cabin. There was no proper due process for this proceeding. In fact, Linda Deloach was not competent to understand and/or comprehend any notice she received by mail as shown by the Court record. Her Attorney in Fact was never served and the Durable Power of Attorney was a public record in the office of the Chancery Clerk of Grenada County, Mississippi. There is no reference to any service by any party in interest,

their respective attorneys or of the Court as to service upon the Attorney in Fact, Garner Jo Deloach Myers.

7. It has come to the attention of the Movant's attorney herein that the Order Granting the Motion to Compel does not include all necessary parties as to the access to the Cabin. The roadway in which to travel from a public roadway to the Cabin is a private farm road jointly owned by Linda Deloach and West Oxford Properties, LLC. Each party owns one-half (1/2) of the roadway down its center line all the way into where the Cabin is situated. The land is posted by both parties from any trespassing or entry. The property on both sides of the division line is purely private and not public in any manner. Debtor herein has no easement into the lands thereof. Therefore, Linda Deloach cannot comply with any order of this Court due to the joint ownership of the farm road and lack of easement by the Debtor. Therefore, it appears that West Oxford Properties, LLC must be joined properly as a party in interest in this cause before any final Order can be issued by this Court.

Wherefore, premises considered, Movant herein, pursuant to Rule 9024 of the Federal Rules of Bankruptcy Procedure and Rule 60 of the Federal Rules of Civil Procedure, requests an order from this Court quashing, setting aside and vacating the prior orders of this Court as to any issues related to the Cabin in that the Movant would show in a hearing before this Court the following evidence:

A. Movant Linda Deloach was never properly served with process of these proceedings as to her property due to her state of dementia and further total inadequate process pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure as well as Rule 4 of the Federal Rules of Civil Procedure.

B. Additionally, Movant's Constitutional rights pursuant to Amendment IV, Amendment V and Amendment XIV of the Constitution of the United States of America have been violated as to proper due process, unreasonable authorization to enter her property, and the taking of her property without said due process of law as well as proper notice by this Court and/or the parties in interest herein and respondents herein and /or their attorneys of record.

C. Also, Respondents herein have failed to join all necessary parties relative to the proceeding in this cause, specifically West Oxford Properties, LLC, in that said entity has partial

ownership of the property over which entry must be made into the Cabin and said entity, as a successor in title to the property at issue, has a potential claim as to an ownership interest in and to the property at issue, the Cabin.

D. Movant further prays that this Court inquire and determine as to whether Movant is entitled to reimbursement of attorney fees and costs relative to this proceeding as to the lack of proper notice, process and due process in these premises and as to her non-ability to recognize and properly defend the proceedings against her and her property due to her diminished condition as well as the violation of her due process rights pursuant to the Rules of this Court and the Constitution of the United States of America.

Movant herein prays for other general and specific relief as this Court may deem just in these premises.

Respectfully submitted,

LINDA DELOACH, MOVANT, by and
through her Attorney in Fact, Garner Jo
Deloach Myers

BY: s/ Edward D. Lancaster
EDWARD D. LANCASTER
Attorney for Movant
Miss. Bar No. 1793

LAW OFFICE:
Edward D. Lancaster
Attorney at Law
104 N. Jefferson Street
P. O. Box 688
Houston, Mississippi 38851
Telephone: (662) 456-2061
Mississippi State Bar No. 1793

CERTIFICATE OF SERVICE

I, Edward D. Lancaster, do hereby certify that I have caused to be served this date, via email transmission and/or electronic filing transmission, a true and correct copy of the above and foregoing pleading to the following:

Sammye S. Tharp, Esq.
Office of the United States Trustee
sammye.s.tharp@usdoj.gov

William L. Fava, Esq.
Chapter 7 Trustee
wfava@favafirm.com

C. Gaines Baker, Esq.
Attorney for Debtor
gaines@cgbakerlaw.com

and by United States Mail, postage prepaid, Wil Mathews, West Oxford Properties, LLC, 829 N. Lamar Blvd., Suite 1, Oxford, MS 38655 and E. Clark Trout, Esq., The Trout Law Firm, 2084 Old Taylor Road, Suite 106, Oxford, MS 38655.

So certified this the 19th day of December, 2023.

s/ Edward D. Lancaster
Edward D. Lancaster, MSB #1793

DURABLE POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, LINDA DELOACH, an adult resident of Holcomb, Grenada County, Mississippi, (sometimes referred to as "principal" herein) by these presents do make, constitute, and appoint GARNER JO DELOACH MYERS of Holcomb, Grenada County, Mississippi, as my true and lawful attorney-in-fact, for me and in my name, place and stead:

1. To demand, sue for, collect, recover, and receive all goods, claims, debts, monies, interest and demands whatsoever now due, or that may hereafter be due or belong to me, and to make, execute and deliver receipts, releases or other discharges therefore;

2. To make, execute, endorse, accept and deliver any and all bills of exchange, drafts, notes and trade acceptances, and to sign and endorse checks and withdrawal requests on any bank account or savings account which I now possess or may acquire in the future and to pay all sums of money, at any time, or times, that may hereafter be owing by me upon any bill of exchange, check, draft, note or trade acceptance made, executed, endorsed, accepted and delivered by me, or for me, and in my name, by my said attorney-in-fact;

3. To purchase, for and on my behalf, such property, real, personal or intangible, including, but not limited to, stock, bonds, notes, securities, certificates of deposit, and the like upon such terms and conditions as my attorney-in-fact may determine;

4. To sell any and all shares of stocks, bonds or other securities now, or hereafter, belonging to me that may be issued by any association, trust, or corporation, whether private or public, and to make, execute and deliver an assignment, or assignments, of any such shares of stocks, bonds, or other securities;

5. To defend, settle, adjust, compound, submit to arbitration and compromise all actions, suits, accounts, reckonings, claims and demands whatsoever that now are, or hereafter shall be, pending between me and any person, firm or corporation in such manner and in all respects as my said attorney-in-fact shall think fit;



Grenada County, MS
I certify this instrument was filed
on 11/07/2022 04:06:27 PM
and recorded in the
FCR
Book 2022 Pages 803-806
John L. Hayward, Chancery Clerk
FCR
Book 2022 Page 803
11/07/2022 04:06:27 PM

Exhibit A

Sharon Mathis

6. To enter into, make, sign, execute and deliver, acknowledge and perform any contract, agreement, writing or thing that may, in the opinion of my said attorney-in-fact, be necessary or proper to be entered into, made, or signed, sealed, executed, delivered, acknowledged or performed;

7. To enter into any safe deposit box that I may have and remove therefrom any of the contents thereof;

8. To employ such brokers, banks, custodians, investment counsel, attorneys, and other agents, and to delegate to them such of their duties, rights, and powers, including among others, the right to vote on shares of stock held by them, as they may determine, and for such periods as she thinks proper;

9. To negotiate for the sale of, to sell, barter, exchange or dispose of any real estate of which I am now seized or possessed in fee simple, or for any less estate, to any person or persons, for any price, or in any manner whatsoever, and for those purposes to execute and acknowledge any deed or deeds, lease or leases, or other assurance or assurances, with general covenants of warranty against all persons, or any other covenants whatsoever, as my said attorney-in-fact may deem expedient;

10. To sell, mortgage, hypothecate, make gifts of any type, and in any and every way and manner deal with any of my real estate, personalty, causes in action and other property, and to sign, seal, execute, acknowledge and deliver any agreements, mortgages and deeds of trust as may be necessary or proper;

11. To lease, rent, or otherwise encumber for a period of months or years any real estate, personalty, choices in action and other property in which I have any interest, and to sign, execute, acknowledge and deliver any agreements, leases, and contracts as may be necessary and proper for such price as my attorney-in-fact shall determine and for such periods as she may think proper;

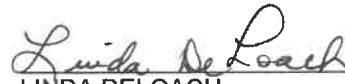
and

12. Without, in any way, limiting the foregoing, generally to do, execute and perform any other act, deed, matter or thing whatsoever that ought to be done, executed and perform or that, in the opinion of my said attorney-in-fact, ought to be done, executed or performed, in and about the premises, of every nature and kind whatsoever, as fully and effectually as I could do, if personally present, and I hereby ratify and confirm all lawful acts done by my said attorney-in-fact in virtue hereof.

Every bank or other financial institution, insurance company, transfer agent, issuer, obligor, safe deposit box company, title insurance company or other person, firm or corporation to which this power of attorney is presented is authorized to receive, honor and give effect to all instruments signed pursuant to the foregoing authority without inquiring as to the circumstances of their issuance or the disposition of the property delivered pursuant thereto. All acts done by my attorney-in-fact pursuant to this power shall be binding upon me and my heirs and legal representatives.

This power of attorney shall not be affected by my subsequent disability or incompetency. It is my intention and desire that it shall validly and effectively continue thereafter.

IN TESTIMONY WHEREOF, I have hereunto set my signature, this 7th day of MAY, 1999.


LINDA DELOACH

STATE OF MISSISSIPPI

COUNTY OF GRENADA

This day personally appeared before me, the undersigned authority in and for the above named County and State, LINDA DELOACH, who acknowledged before me that she signed and delivered the above and foregoing instrument on the day and year therein mentioned.


Given under my hand and seal, this 7th day of MAY, 1999.


NOTARY PUBLIC



DECLARATION made on May 7, 1999 by LINDA DELOACH of Grenada County, Mississippi.

I, LINDA DELOACH, being of sound mind, declare this if at any time I should suffer a terminal physical condition which causes me severe distress or unconsciousness, and my physician with the concurrence of two (2) other physicians, believes that there is no expectation of my regaining consciousness or a state of health that is meaningful to me and but for the use of life-sustaining mechanisms my death would be imminent, I desire that the mechanisms be withdrawn so that I may die naturally. I further declare that this declaration shall be honored by my family and my physician as the final expression of my desires concerning the manner in which I die.


LINDA DELOACH
6721 Hwy 7 South
Holcomb, Ms 38940
SS# 426-84-5916

I hereby witness this declaration and attest that:


- 1 I personally know the Declarant and believe the Declarant to be of sound mind.
2. To the best of my knowledge, at the time of the execution of this declaration, I:
 - A. Am not related to the Declarant by blood or marriage.
 - B. Do not have any claim on the estate of the Declarant.
 - C. Am not entitled to any portion of the Declarant's estate by any will or by operation of law, and
 - D. Am not a physician attending the Declarant or a person employed by a physician attending the Declarant.

WITNESSES:


PHIL EMBRY

Address:
209 South Street
Grenada, MS 38901
SS# 427-86-3791

Address:
1965 Tuscola Drive
Grenada, MS 38901
SS# 426-37-9508


TEENA W. BLAKELY



Michael Watson

SECRETARY OF STATE

This is not an official certificate of good standing.

Name History

Name	Name Type
West Oxford Properties, LLC	Legal

Business Information

Business Type:	Limited Liability Company
Business ID:	1121685
Status:	Good Standing
Effective Date:	06/21/2017
State of Incorporation:	Mississippi
Principal Office Address:	706 Jackson Avenue East, Suite B Oxford, MS 38655-3816

Registered Agent

Name
Matt McKenzie 829 N. Lamar Blvd., Ste. 1, Oxford, MS 38655 Oxford, MS 38655

Officers & Directors

Name	Title
Matt McKenzie 829 N. Lamar Blvd., Suite 1 Oxford, MS 38655	Organizer
Wil Matthews 706 Jackson Avenue East, Suite B Oxford, MS 38655	Manager
Edward W. Matthews 807 Tuscan Ridge Drive Oxford, MS 38655-9340	Manager

Exhibit "B"